IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:22-CV-203-JRG
)
Plaintiff, (
)
vs. (
)
MICRON TECHNOLOGY, INC., (
et al.,) MARSHALL, TEXAS
(AUGUST 22, 2023
Defendants.) 9:00 A.M.

MOTION HEARING

BEFORE THE HONORABLE ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

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THE COURT: Good afternoon. Please be seated.

For the record, we're here for the motion hearing in Netlist versus Micron Technology, et al., which is Case No. 2:22-203.

Would counsel state their appearances for the record?

MR. BAXTER: Good afternoon, Your Honor. Sam Baxter with McKool Smith and Jason Sheasby for the Plaintiff. And we're ready to go.

THE COURT: All right. Thank you, Mr. Baxter.

MR. HILL: Good afternoon, Your Honor. Wesley Hill, Mike Rueckheim, and Byuk Park on behalf of Micron. And we're ready to proceed.

THE COURT: All right. Thank you, Mr. Hill.

Don't worry. I see you, Mr. Sheasby.

MR. SHEASBY: I wanted to stand as a sign of respect.

THE COURT: Thank you.

We have motions by both sides on the agenda today, but the Plaintiff's motions were filed first, so unless counsel have a better idea, we'll just start with those.

MR. SHEASBY: May it please the Court, Your Honor.

This is motion Docket No. 131, which I think is the first in order that was filed this relates to license agreements that have been produced.

And one of the things I think is very important is that

it creates a dangerous precedent when the holder of a document serves as the gatekeeper as to the ultimate admissibility of the document, and the issue that we have is that there is a corpus of license agreements that relate to DRAM or memory module that Micron has entered into over a period of its history. Those agreements are properly discoverable. They relate at the same level to the same technology as the patents-in-suit and, therefore, they're technologically comparable.

What Micron is doing, and I don't attribute any ill-will towards it, is that there is at least one agreement, which is the Rambus agreement--and there are likely others--that it is self-selected and refuse to produce. And it hasn't refused to produce them because they're not technologically comparable; it has refused to produce them for various reasons. For example, it said, Well, this was part of a settlement of litigation, or in the case of Rambus, there was a Rambus/Samsung agreement that was signed. My expectation is the terms of the Rambus/Micron agreement are similar to the Rambus/Samsung agreement. And apparently Micron's counsel sat in the hearing -- the trial between Netlist and Samsung and was unhappy with the decisions that Judge Gilstrap made regarding the use of that agreement.

I would respectfully submit that the decision as to admissibility is different from the decision as to

responsiveness to a production. The agreements that relate to DRAM technology should be properly produced; they should not be self-edited or self-selected. Judge Gilstrap can properly or Your Honor can properly make the decision as to whether the agreement is admissible in front of the jury and the use that can be made to that agreement.

If this was a situation in which we were looking for agreements that were not technically comparable agreements -- let's say Micron had a division that was making cell phones. It is perfectly principled for Micron to say, We don't think the division that produces cell phones needs to be produced, and that is something we can engage on a technological basis. The argument is we don't like the rate or we think you're going to misuse this agreement in front of the jury is usurping the role of the judge.

And so we respectfully submit that Micron be ordered to produce all license agreements it has entered into relating to DRAM.

Thank you, Your Honor.

THE COURT: And is that the way you would propose to define the relevant technology as relating to DRAM?

MR. SHEASBY: I would, and I'll explain to you why.

It is quite clear to us that the ability for us to agree on what is in and out from a technologically comparable standpoint is not feasible. So, for example, Micron has at

times said, Well, worldwide license agreements are not comparable because they may include things in addition to DRAM. Flip-side is it's produced and it's relying on worldwide license agreements when it desires to do so. In fact, it is arguing that two worldwide license agreements that we entered into with SK hynix and Samsung are highly comparable. Those agreements include DRAM, but they also include lots of other technologies. And so a way to stop us from having this fight is produce all agreements that licensed DRAM. We can then have a fight about response -- relevance and admissibility in front of the Court.

THE COURT: And is there any disagreement between the parties about the relevant time frame?

MR. SHEASBY: So they went back 10 years, they said. I'm slightly uncomfortable with the fact that they arbitrarily selected 10 years. That wasn't the -- certainly we did not limit the request. And so they didn't identify there as being any extraordinary burden as to going back longer than 10 years, and so they have set a 10-year arbitrary limit. That would bring us back to 2013, thereabouts. They're actually relying on agreements that we entered into before 2013 for their case against us. And so, once again, I'm concerned at that arbitrary 10-year limit.

If they would have come to me and said, Listen, if we go back 20 years it's going to be a thousand-fold agreements;

we're not just going to do that, that would be something we could engage, but I've seen no principled reason for the 10-year cutoff. It doesn't in any way relate to the nature of the case or the technology. The patents-in-suit were filed more than 10 years ago, and so the technology is a vintage that's actually much older than 10 years. So there is also a concern about that arbitrary 10-year cutoff.

THE COURT: What year does the damages model begin?

MR. SHEASBY: So the damages model began for the two patents-in-suit that relate to DDR4. DDR4 began to be developed in 2011, I believe, and I believe our patents were filed in 2004 and 2007.

THE COURT: All right. Thank you, Mr. Sheasby.

MR. RUECKHEIM: Your Honor, Mike Rueckheim on behalf of the Micron Defendants.

Your Honor asked how Netlist defines the relevant technology here, and Mr. Sheasby I think focused in on DRAM. Netlist has already defined the relevant technology here, and this is mentioned in Micron's briefing. There is three -- Netlist served a document request type letter first thing in the case with hundreds of different topics in it, and there's three topics in there, 33, 44, and 75--it might be four; I think 62 as well is mentioned in our briefing--that defines -- that says, We want license agreements relating to L R dim data buffer retiming features as used in LRDIMM. We have

license agreements relating to implementing power management circuitry on the modular board and the DDR5 DIMM.

And so that's what we did. We produced -- there's a little difference, I think, maybe in the disagreement or changed in scope as to what Netlist is seeking in its motion versus what they asked us to produce or we did produce. And as far as the relevant time frame, most of the patents, four of them in this case, issued in 2020 to more recent, so just within the last couple of years. There is the two patents that relate to what's called HBM, or they're accusing HBM products that issued earlier in time, 2016, 2014, but the first accused sale of HBM products wasn't until 2021. So we chose 10 years because it's well before any hypothetical negotiation in this case.

So that takes us to I think the real problem, as -- counsel for Netlist focused in on this Rambus agreement. That's the real dispute here--whether or not we should produce this Rambus agreement. And we have withheld the Rambus agreement. We've offered to produce the Rambus agreement with the royalty amount redacted out. And the problem here, Your Honor -- and I agree with Mr. Sheasby that this can be addressed at a MIL stage or a *Daubert* stage or an admissibility-type argument, but the problem here is I did attend the Samsung/Netlist trial, and as stated in Netlist's own briefing--this is from the joint status report they filed

last night--they mentioned that the royalty amount, this amount was mentioned repeatedly at trial. And they did. They mentioned this huge amount of the Samsung/Rambus license repeatedly at trial, yet when they're talking to Judge Gilstrap in the pretrial proceedings--and we've quoted a lot of these--this is Netlist's counsel says, "Mr. Cordell, Samsung's counsel, is right. If the expert would have come in and said X hundred million dollars is what they paid Rambus, give us that. That would be totally inappropriate." Totally inappropriate. And it is totally inappropriate. To give the jury such a high number like that, it risks jury confusion, and that's exactly why we're offering the license with the license amount redacted.

There's a lot of issues that can come up at MILs and we can address it then, we can address it at *Daubert*, but to make sure this issue was addressed, because it's an important issue, we are offering to produce it with that amount redacted.

THE COURT: All right. I don't see any basis to redact the amount during discovery if you're not able to show that it is not discoverable. And I understand that you take the position that improper use was allowed of the amount at a prior trial. I don't know what to do with that argument. You're saying the Court is not able to properly control the arguments of counsel? I'm not sure what.

MR. RUECKHEIM: No, Your Honor.

I do think this can be addressed in MIL or *Daubert*. This -- so the reason we're withholding is lack of relevance. This is a non-technically comparable license. Counsel for Netlist just said it was technically comparable, but its own expert in the Samsung case said the opposite; it shouldn't be used to determine the royalty amount. And so that's the reason for withholding it, but I do understand Your Honor's point that this can also be addressed at a later time.

THE COURT: All right. Well, with respect to the Rambus license, I will order that it be produced unredacted.

With respect to other licenses, point me to the description that you say is in your brief of the relevant technology.

MR. RUECKHEIM: If Your Honor has -- I think we copied into the joint status report that was filed last night --

THE COURT: All right.

MR. RUECKHEIM: -- as -- I don't have the docket number, but it was filed last night.

THE COURT: That was Docket No. 152.

MR. RUECKHEIM: 152? And on page 3, if you see near the bottom of the page, there's some wording in bold. That's directly quoting Netlist document requests in this case.

THE COURT: And what you're saying is that the only

licenses that they have requested in discovery are those that are described at the bottom of page 3 of your joint notice?

MR. RUECKHEIM: That is correct, Your Honor.

THE COURT: All right. Well, let me hear the response to that. Thank you, Mr. Rueckheim.

MR. SHEASBY: Your Honor, that's not accurate. There was an original letter that was sent out to begin to discuss documents that are relevant. We asked for certain license agreements. We listed 163 categories of license agreements; 163 categories of topics that we wanted discovery on. It soon became apparent to us that we were not comfortable with the way Micron was identifying the buffer or relating to buffer or relating to HBM or relating to on-module power management because that would require it to literally go through each of the patents that were licensed to make a determination, which I -- they could not do and I -- it's not proper for them -- it would be -- it's inconceivable -- it's unfeasible for them to represent that they went through each of the license agreements and identified a patent that relates to a buffer or relates to on-module power management or relates to some feature of an LRDIMM.

And so what we did in our subsequent meet and confers is we just said basically, Give us anything that relates to semiconductor or semiconductor manufacturing, because DRAMs and HBM are made--HBMs in particular are made using a

semiconductor manufacturing process--memory products, transistors or circuits, or components, or services of other personal computers. That's the revised request we made because we realized it was impossible for them to confirm compliance with our original request because we required them to look at every single patent.

And so basically what we've done is this is the bidding that we came to them as a compromise with. They declined that compromise and that led to the motion practice.

THE COURT: And how would DRAM stand as a substitute description for this?

MR. SHEASBY: Yeah. So DRAM is all of these things. And it's a semiconductor, it's used in memory products, transistors, and circuits, and it's a component of servers and other personal computers. And so it's a way of them being -- easily being able to look at the agreement and say, Did this agreement license DRAM products? If the agreement licensed DRAM products, it would fall into these categories.

And so the idea is to make this in a way that doesn't place an undue burden and doesn't create additional disputes, because the problem with the original requests--and this is part of our responsibility--is there's no way they've gone through each of the license agreements to confirm whether one of the patents relates to the specific technology in the -- that are claimed by the patents, and so we went for the

broader category there.

I should also say I misspoke, Your Honor. The first patent was filed in 2009.

THE COURT: All right. Thank you, Mr. Sheasby.

Mr. Rueckheim, tell me why I shouldn't use DRAM as the descriptor for the relevant technology, at least at the discovery stage.

MR. RUECKHEIM: So I guess I want to maybe address what Netlist actually served as far as its request for licenses. And so what -- I think Mr. Sheasby said that it's impossible for Micron to go there and look for licenses that cover those requests. It wasn't. We did. And we produced them.

And then as far as comparability, comparability I believe is a subject matter for really experts to discuss. And so comparability on the production stage is striking me a little bit odd, only because they've asked for production of certain materials and we produced them. And I think Mr. Sheasby really just pointed to it's his motion which changed the request and now is asking for that material I guess in addition to anything involving DRAM. So I'm a little thrown off by it.

THE COURT: Well, you know, under the Eastern District rules, the discovery obligation for documents is not really tied to the requests that a party has made; it's tied

to relevance.

MR. RUECKHEIM: Understood, Your Honor.

THE COURT: And so that's why I'm trying to figure out the best way to describe what for discovery purposes would be relevant technology. I don't like having orders that are not easily understood. And I'm willing to go with your timeline, the last 10 years, especially since, as I understand it, you've already done a search in that time frame, and -- but I want to capture the -- some relevant field of technology, and I'll go with DRAM unless you can talk me out of it.

MR. RUECKHEIM: My co-counsel Mr. Park reminded me it's probably more accurate to say DRAM modules, just because this case is more about the actual module than the DRAMs that are on the module. But, Your Honor, I am fine for production purposes DRAM modules going back 10 years.

I will say that there's -- you know, just to avoid any confusion in the future, to the extent there's licenses involving trade secrets, that that's definitely not comparable in any sense here under our view or -- I think Mr. Sheasby mentioned licenses regarding semiconductor manufacturing. That's another one that has nothing to do with the issues in this case. But to the extent the Court is -- wants to adopt DRAM modules, that's perfectly acceptable for Micron.

THE COURT: All right.

MR. SHEASBY: A couple of issues.

The idea that the proposal that we were asking for was in our motion, it's just inaccurate. It was in our correspondence mirroring what we just said in the motion itself. So it wasn't like we just came up with something in the motion; we asked them to produce these in meet and confer and they declined.

Second issue. Once again, the DRAM versus DRAM module is of issue with us, and the reason for that is that HBMs are not DRAM modules. HBM, which is one of the accused products, are four or six little wafers of DRAM that have holes drilled into them and are stuck together. Those are not a DRAM module. Those are actually produced at a semiconductor manufacturing stage because of the TSVs that run through them and because they're packaged, and that's exactly why I said DRAM as a way of being able to sweep in both HBM technology as well as module technology.

THE COURT: All right.

MR. RUECKHEIM: With that clarification, Your Honor, we're fine with DRAM.

THE COURT: All right. So I'll grant the motion with respect specifically to the Rambus license, but further, with respect to any additional licenses that have not already been produced that relate to DRAM over the last 10 years. And that takes us to the next motion.

MR. SHEASBY: Yes, Your Honor. I believe the next motion on the docket is the --

THE COURT: It's Document No. 132, I believe.

MR. SHEASBY: Yes. That's correct.

And this motion has I think three parts to it. The first part of it is something that we tried very hard to resolve and it should not be in front of Your Honor--I will just leave it at that--which is that Samsung -- SK -- Micron has taken the position that if -- it has PowerPoint presentations that include in them a circuit diagram or a line of what it would describe as LTR code. It refuses to produce those because it says they're source code and they can be only examined on a source code computer.

So we went back to Micron and we explained to them a couple of issues. And this is the protective order, and I'll show it to Your Honor. The protective order doesn't talk about PowerPoint presentations that include a line of code or a circuit diagram; they talk about source code and live data. There's no reference to documents containing source code or live data as itself being a source code document.

THE COURT: All right.

MR. SHEASBY: And you see, if you go through the whole definition of source code, there is no part of the source code definition that relates to a PowerPoint presentation that includes a circuit diagram. There is an

express provision for instances in which a document includes source code material that allows for them to be printed out, allows them to be used like any other document, as long as they have a special source code designation on it.

So source code can be printed out. The problem is the following: The source code that can be printed out is only 75 consecutive pages or 950 total pages. So these are large groups of PowerPoint presentations and documents that Micron is claiming fall into the definition of source code material because they may include a circuit diagram, they may include a line of code.

It's impossible for us to get and access those documents because they treat them on the source code computer, and if we ask to print them out, they say you've exceeded your 950 pages, you're done. Of course 950 pages is not the maximum; it's a rule of reason.

So we've proposed the following compromise to Micron. If they will allow the printout of the PowerPoint presentations and memorandum, we will treat them as source code. We will treat every single page with the save gravity of the protection of source code in terms of who can look at it, when it can be printed out, how it can be printed out. But the ability for you to put a huge number of PowerPoints, which we need to prepare our case, on a source code computer, limit the number of printouts, destroys the purpose of the protective

order which is allow both -- a balance between protection and being able to advance the case. I have no idea why the proposal that we've made, which is print out the documents, we will treat them all as source code protected, is not a sufficient resolution to this dispute.

THE COURT: Tell me -- you mentioned PowerPoints. What are the other categories of documents in which this occurs?

MR. SHEASBY: Data sheets, PowerPoints, and memos.

THE COURT: And memos meaning memos back and forth among Micron --

MR. SHEASBY: Employees, yes.

THE COURT: Employees.

MR. SHEASBY: And Excel spreadsheets. That's the other one.

So basically the ruling would be anything that is in a PDF format which is not live, and by being not live, it doesn't fall in the definition of source code, and it can't be -- and anything that's PDF format, a PowerPoint format, a memo format, or an Excel format we will treat as source code protection, but it should be allowed to be printed out and -- as such.

THE COURT: All right. And so really you're just focused on having those not count in the number of pages of source code that you're allowed under the protective order.

MR. SHEASBY: Right. It's the consecutive page limitation and to the extent that the presentations are greater than 75 pages, and it's the -- it's 950-page limitations.

And literally I see them. They brought examples with them. May I approach?

MR. RUECKHEIM: Sure.

MR. SHEASBY: These are the type of things that they've put on the source code computer and are limiting our ability to print out. This is a PowerPoint presentation that was made by an employee.

I won't show any page. Don't worry. Don't worry. Don't worry.

And so this is a memo -- there's a memo that I'll approach Your Honor with so you can see it.

THE COURT: All right.

MR. SHEASBY: It's a memo. It's not source code; it's a PDF. It's screenshots of an excel spreadsheet that were taken by an engineer and created.

THE COURT: And what is your understanding of the purpose for which these documents were created?

MR. SHEASBY: These documents were created by engineers as they were describing the design of their products.

And so one of the things I don't want to have is a debate

about whether Micron should vigorously protect its confidential information. They should. They have every right to make sure that -- here's another example, if I may, Your Honor. May I approach again?

THE COURT: All right.

MR. SHEASBY: So this is physical annotations of designs where engineers are describing what -- and interpreting what a figure shows. And then there's a dozen -- I'm just holding them up. There's a pile of these PowerPoint presentations.

THE COURT: And is it your understanding that these are precursors to the written or compiled source code?

MR. SHEASBY: So there are two things. They are interpretations of the compiled source code or they are -- not everything is expressed in source code. For example, most of the modules do not have source code associated with them; they just have circuit diagrams. So these may be actually be the -- most of this is the interpretation of the operation of what's occurring at a high level.

I can pass another one up, Your Honor, which I think may be more apt.

THE COURT: All right.

MR. SHEASBY: Basically what they're doing is they're interpreting the design of their products so that -- this is an engineer explaining what the design and operation

of the products is together. So these are the crucial documents that are the glue that -- they're annotated, they have detailed explanations of what the designs are doing and how they're doing. They are basically the critical documents that we will use to establish infringement.

And so what we ask is -- we have no problem if they're treated as source code. We would just ask that we be allowed to have anything that's in a PDF format, anything that's in a PowerPoint, Excel, or Word memo format that did not exceed the -- not count in the 950-page limit or the 75-page minimum. That's all we ask.

THE COURT: All right.

MR. SHEASBY: Thank you, Your Honor.

THE COURT: Thank you.

I will return these documents for your use.

MR. SHEASBY: Thank you, Your Honor.

MR. RUECKHEIM: Your Honor, Mike Rueckheim again for Micron Defendants.

I think Mr. Sheasby made a little bit of my argument for me at the end there. These are engineering documents, critical documents, Micron's most confidential information describing the design of the accused products here, the actual design. They designed and they are considered design for designs that go into the implemented products that are at issue in this case.

And we have all the documents here. We can walk Your Honor through exactly how they meet the protective order, which we complied with. Definition of source code material is something that defines a physical arrangement of circuits, such as circuit schematics, which Mr. Sheasby just pointed out to Your Honor. Layouts, placement, and routing information that was --

THE COURT REPORTER: If you would slow down, please.

MR. RUECKHEIM: Oh, no worries.

The protective order also -- this is Docket 46 at 6 to 7 also defines any files containing any of the foregoing schematics, layouts are also source code material.

And so what has happened since filing the motion, Your Honor, is that Netlist's counsel asked us to take again a look at six of the documents on the machine and provide redactions of those documents. For example, the first page Mr. Sheasby showed Your Honor, I don't believe--I just looked at it quickly-- would -- you know, would be redacted. And it would just be the implementations that are in the actual design. And we're happy to do that. We told Netlist we're happy to do it and we're hoping to have that production complete by the end of the week.

And then Mr. Sheasby also mentioned to me for the first time today that his concern is really printouts, and I told him I'd like to consider that with the client to see if

there's an issue. But as I sat here I realized there is no issue. There's a hypothetical issue. Netlist has not exceeded any printout request nor have we rejected any printout request. This is a hypothetical concern. I don't see any reason why Netlist would want to print the entirety of all these PDF documents. I think it's looking for something more broad and undefinable. But if there's a concern, let's address it at the appropriate time.

THE COURT: Well, Mr. Rueckheim, I guess that the page limits on copying are something that exist only with respect to source code. Right? Other relevant documents do have to be copied and turned over. So I guess that gets us back to the question of why are these documents being treated as source code.

MR. RUECKHEIM: It's the inclusion of the layouts, the schematics, the circuits that show the design of the accused products that are included in these documents. As Mr. Sheasby said, these are the critical documents showing the features here, the features that Micron has considered.

I have more examples for Your Honor if you'd like to see in camera review of these documents that are actually showing the circuit diagrams here.

THE COURT: You know, referring to them as the critical documents that show the operation of their devices is just a very compelling reason for the Plaintiff to want them.

MR. RUECKHEIM: Plaintiff has them, Your Honor. They're available for inspection. We offered to redact out -- I'm sorry. Plaintiff has them for inspection. They have them. When I say 'redact out', I mean take out -- I'm just going to hold this up. I don't know if Your Honor can see it, but diagrams like this, redact those out and then produce the rest of the information to Plaintiff. But they can see this diagram and the entire document, if it wants, on the source code computer. So our offer to produce these redacted, they still have the full document. We're not trying to hide anything; we're just worried about protecting the confidentiality of Micron's confidential source code material.

THE COURT: And I'm looking at the protective order now. Where within the protective order is source code defined in the manner you're relying on?

MR. RUECKHEIM: This is paragraph 8 of the protective order, and I believe -- I don't have the protective order in front of me. I have the relevant quote from the briefing. In fact, now I do have the protective order in front of me. So it is -- it starts at the beginning of paragraph 8 and then on the next page, the first full sentence, this is on page 6.

THE COURT: So do you have an estimate as to the approximate number of pages of the materials we're talking about here?

MR. RUECKHEIM: Your Honor, they've asked about six documents, and we have the six documents here as far as printout. As far as the number of pages that Netlist would later request to print out of these, it's completely unclear if Netlist believes these are the documents it wants to use to show alleged infringement or other source code, or if they just want to print out one page of these documents.

THE COURT: All right.

MR. RUECKHEIM: And we have a better estimate of it, Your Honor. Like I said, Netlist asked us to redact out what we believe is the -- really the most confidential portion of these and produce the rest and print it -- copy outside the source material machine so we'll have a better estimate here based on the number of pages redacted.

THE COURT: All right. Thank you, Mr. Rueckheim.

MR. SHEASBY: Your Honor, I think it would be fair to say that no one thought PowerPoint presentations and memos and Excel spreadsheets on Netlist's side was going to be locked up in a source code vault and made unusable. What we know is this. We know that the protective order has a procedure for when source code materials are part of a larger document, and what that requires you to do is you can use it as a normal document, you just need to stamp the specific pages that contain the source code as 'source code'.

THE COURT: You know, Mr. Sheasby, the provision

you're talking about is describing a situation where the receiving party uses it in a report or a brief or some other document that the receiving party creates.

MR. SHEASBY: I agree, Your Honor. My point is, is that the parties contemplated and Micron is clearly tolerating the presence of source code -- what they define as source code in a document that's not locked up on a computer. That's the point I'm trying to make, which is to say that we will treat the entire -- for Excel spreadsheets, for Excels, PDF, and Word documents, we will treat the entire document as source code only. We just ask that we be relieved from the 950-page, 75 pages. That alone that they brought right now would exceed our limit.

THE COURT: So tell me what number of pages you expect this might include.

MR. SHEASBY: I don't know what additional PDF pages they would have, and so what I would request is that any PowerPoint, Word document, or Excel document that is put in the source code computer not count against page limits, and we treat it as source code protected only.

THE COURT: What I am willing to do is to fairly arbitrarily pick a number and add it to what the protective order already provides to cover these categories that you've mentioned--PowerPoints data sheets, memos, or Excel spreadsheets that have what Micron believes meet the

definition of source code--and I'll arbitrarily put that at 500 pages. And if you think you can justify more than that, you can meet and confer and then request it if you need it.

MR. SHEASBY: And just for a clarification, it's only the pages they identify as source code that count as source code.

THE COURT: It would be the pages that they -- yes, that they believe meet this definition of source code.

MR. SHEASBY: Okay. Great. I think that should be enough to get what we need done. Thank you, Your Honor.

THE COURT: All right. Your next motion I believe is --

MR. SHEASBY: Your Honor, that was only one part of the motion --

THE COURT: Oh, all right.

MR. SHEASBY: -- I'm sorry to say.

THE COURT: Me, too.

MR. SHEASBY: The next part of the motion is the continued failure to provide the RTL code for the HBM products that are at issue in this case.

And to give you some context, HBM products are made up of a group of chips. Each of those chips will have a format that's designed based on the RTL code. The motion was filed because when we went to look at the RTL code, there was an absolute morass of unorganized RTL code that had been

literally taken out of whatever context it was in and dropped in the database such that we could not understand what particular RTL code went to what particular chip.

They -- in the opposition, they point to a file path where they say go to this file path and you'll find the correct RTL code. We went to that file path and that file path was for only a minor portion of the RTL code and it actually omitted RTL code for a number of their designs.

We had a follow-on declaration that we submitted last night from Doctor Barr that talks about this issue. And so what is the actual item in this situation? There are four dye designs that are -- they've disclosed as having RTL code for them. What we need is for Micron to definitively identify not a morass of hundred or millions of lines of code, but the universe of RTL code that relates to those four designs. They have, to date, been unable to do that.

We went to their path that they identified in their opposition. That path went to a subset of folders that did not include two of the four core dyes that they designed, and that subset of folders was only a small subset of the millions of lines of RTL code on the drive.

So we have no idea why they put millions of lines of RTL code on the drive if there is only a small subset that actually depicts the products. We don't know if the path that they describe depicts all the designs, and so what we need is

a procedure where they definitively identify what RTL code relates to each of the dyes.

I should say that this is -- if we're talking about strict adherence to the protective order, the protective order is -- requires that the source code be produced in tact. And so what they did was pull out random folders of RTL code is the exact opposite of what the protective order requires if we want to be strictly adhered to that.

So this is impossible, it seems to me -- I've been in many, many situations in which one side says they didn't produce the source code, the other side says they did produce the source code, there are competing declarations, and there's no way for the court to arbitrate it.

And so what I would just ask is a definitive statement as to what is the complete RTL in in-tact, unaltered form for the four core dyes they have designed.

THE COURT: All right.

MR. RUECKHEIM: Your Honor, Mike Rueckheim again.

So there has been a breakdown in the meet and confer process I think a little bit here because -- particularly looking at the declaration Netlist submitted yesterday with the joint status report, it seems to disagree with Netlist's opening motion. Netlist declarants stated that Micron actually did identify the directors that have RTL, and that he reviewed it and did not see RTL for two of the designs that

Mr. Sheasby mentioned. And in reality, there are -- there is no RTL for those two designs, and so that's not surprising.

And I think one of the problems we have here is that the parties had negotiated early in the case, because of the complexity of the case, that Netlist would -- that Micron would provide an employee to help Netlist's review of the source code material, and Netlist later changed its mind halfway through the case and asked Your Honor successfully to exclude Micron from having somebody there to help with identification.

That set aside, we did on two occasions show -- this is after the fact, after the Court had ordered Micron doesn't have to have an employee there or amended the protective order. We did show Netlist's reviewer where the RTL code is. It's in a folder that I believe has the word 'RTL' in it. They found it, they reviewed it, and I think just the only confusion here is that Mr. Sheasby was looking for RTL for two of the designs and there is none.

THE COURT: What do you say to the argument that in this case Micron did not produce its RTL code in the manner in which it's used in an in-tact format?

MR. RUECKHEIM: So I did hear that, Your Honor, from Mr. Sheasby. I did not see that in the briefing, so I'm not sure it's a live issue for the Court. But we collected the material, we offered to have an employee there, and for most

of the case did have an employee there to help facilitate the review; here's where what you're looking for is located. There is no -- if Mr. Sheasby's alleging this--I'm not sure he is--but there was no jumbling; this is production of source code that Micron has that relates to the case.

THE COURT: So your position is that Netlist has seen the RTL code for two of the core dyes, but the other two that are at issue do not have any RTL code?

MR. RUECKHEIM: Correct, Your Honor.

THE COURT: All right.

MR. SHEASBY: So, Your Honor, here's the protective order that requires the RTL to be produced in in-tact native format in the structure and organization that it came from. In Doctor Barr's first declaration he noted there was a morass of disorganized files of RTL code without any identification as to what they were. There's millions of lines of RTL code.

Then after we filed our motion, in their opposition they said, Why don't you go look at this link. This link links to a certain subset of RTL code which, once again, is disembodied and incomplete, and ignores all the other RTL code that they produced on the source code computer.

I don't know why they produced all those thousands -- millions of lines of RTL code on the source computer which they say don't relate to anything, but it's been a wild goose chase.

So what we just need is we just need something definitive. If they only have RTL code for two of the four core dyes, we ask that they specifically produce that RTL code in in-tact format and definitively tell us this is the RTL code, because what we have is just no way of understanding these files they are in such a disorganized state on the computer.

THE COURT: Do you accept the representation that I just heard that for the other two of the four core dyes there is no RTL code?

MR. SHEASBY: Well, that's actually inaccurate. So for the other two of the four core dyes we did find RTL code, we just -- it's just -- that RTL code is not in the pathway they pointed to. So that may be incomplete RTL code or maybe RTL code that is not in its final form.

So we did find random RTL code for all four dyes, but it's not in the path that they pointed to as the definitive RTL code, which is why -- it is okay for them to have incomplete RTL code--for example, if two of the core dyes have not been fully designed--I totally get that. What we just need is an in-tact format, produce the RTL from the code database so that it says this is the core dye and all the RTL underneath it is present. We can see exactly what stage it's at, we can see exactly what -- how it's been changed and how it's evolved.

And so if they produce the in-tact file structure for the entire RTL for each of the four core dyes as they exist today, this problem is resolved. And I don't agree that this was a new issue, and Mr. Barr -- in Doctor Barr's first declaration he expressly speeches -- he expressly speaks about the fact that there are 4 million lines of code that are randomly collated. This is in paragraph 2 of his declaration. There is millions of lines of code, and he expressly notes -- is that in a standard code repository, providing us with an in-tact tree of official RTL code would take just a few minutes. This is in paragraph 2 of his original declaration.

By the way, he actually did -- as an aside, there's 60 PDFs and PowerPoint files that are in the source code repository that we've identified. But that's an aside from the last one because you had asked.

He talks about the fact that if they would just give us the official in-tact tree of the RTL code as it exists for each of the four dyes as opposed to these random folders that are spread out or hidden in sub-folders, we can solve this problem.

THE COURT: I'm looking at his declaration, which is in the record as Document 132-1. Where is it that he indicates that that can be quickly and easily done?

MR. SHEASBY: The last sentence of paragraph 2. "Using the standard code repositories that are employed

throughout the industry, providing Netlist with the in-tact tree official RTL code would take a few minutes."

And I've seen this done. In their code repositories, it will have the name of the core dye and will have the complete revision history of all the RTL for that core dye. Instead, they pulled random folders and said go look at this path, don't look at this path, and it makes it impossible for us to review.

THE COURT: All right. Thank you, Mr. Sheasby.

Mr. Rueckheim, do you have anything from your expert that controverts the part of Doctor Barr's report that was just referred to?

MR. RUECKHEIM: I'm sorry, Your Honor. Can you state that one more time?

THE COURT: The part of Doctor Barr's report that Mr. Sheasby just read that says that providing an in-tact tree official RTL code would take a few minutes, do you have anything from your expert controverting that?

MR. RUECKHEIM: So, no, Your Honor, we don't have anything from our expert regarding this. I think Mr. Sheasby now is pointing to a declaration that was included as an exhibit to the motion to change what he's asking for, and I understood he was asking where is the authoritative RTL code for the products at issue here and we told him.

Mr. Park here sitting to my left told Netlist reviewers

-- he was there in person and personally told them, This is the folder, this is where the code's at. I don't see what -- how there could be a disagreement. They know the folder. The declaration submitted yesterday by the same expert -- so I guess the answer to your question, Your Honor, is we do have an expert; it's their expert, Doctor Barr -- Mr. Barr -- Doctor Barr. He submitted a declaration exhibit yesterday with the joint status report and said that he saw the RTL for two of the accused designs here. So they have it.

Mr. Sheasby then said, Well, what about the other two designs; there's no RTL? Mr. Sheasby said, Well, I saw RTL -- our expert, our reviewers saw RTL in other folders that Netlist produced because this is how Netlist has the information. Show us. But we've never had that conversation. He's never come to us and said, Hey, Mike, I think we see some RTL for the accused products here. You are telling me there's no RTL. Let's have discussion. Instead, he raises this request. He files a motion immediately, and now we're here addressing it.

THE COURT: I have the second declaration up now. That's the one that's in the record at 152-3. What part of it are you referring to, Mr. Rueckheim?

MR. RUECKHEIM: Paragraph 3 to start, Your Honor, says that the code reviewer searched some of Micron's RTL files. He lists the pathway. These were identified by

Micron's counsel. And he inspected it and he says in paragraph 4, second sentence, "For two of the dyes the Netlist reviewer did not find RTLs." There is no RTL for those two dyes. He says, "I understand Micron claims they do not have RTL code," and then he says, "but the reviewer located some."

The problem is we got this declaration I think it was midnight last night. So if there's RTL -- if we're telling the Court there is no RTL for these other dyes and their reviewer is saying yes, there is, I'd like to resolve that and have time to consider the issue.

THE COURT: Well, I guess the request that I'm now hearing is that Micron perform what Doctor Barr says will take just a few minutes, and that is to give the RTL code in the format that he described in his original declaration.

MR. RUECKHEIM: So again, Your Honor, it may be just some kind of lack of understanding probably on my part. But we've given Netlist the live code. This is the actual code. It's my understanding is whatever this tree is, it's there. So if there is a certain software that Netlist has proposed and it wants us to install it on the source code computer and perform some tree action, I mean, I'm sure that would be fine, if he said it's compatible with the live code. But I -- we told Netlist where the code is at and they reviewed it and their expert said that.

THE COURT: The expert said he had seen some, but he

did not -- I did not read that as him taking back what he said in his original declaration.

So I am going to grant the motion to the extent that Micron will be directed to perform what is described there in paragraph 2 of Doctor Barr's original declaration, and I'll set that out in the order. And if you believe you have complied with that, you can so certify.

MR. RUECKHEIM: And just one point of clarification, Your Honor. I don't know how to do it. I'm hopeful people at Micron would. They're much smarter than me. But if Plaintiff here has certain I guess software that it's hoping to generate a specific result regarding a tree, we'd ask that Plaintiff identify that and identify what information it's missing from that code folder that the tree -- if the tree is there or not. I think -- from what I've been told, it's there.

THE COURT: I will also direct that Plaintiff use its best efforts to assist in describing what that requires.

MR. RUECKHEIM: Thank you, Your Honor.

THE COURT: Is there anything else in this motion, Mr. Sheasby?

MR. SHEASBY: No, Your Honor.

THE COURT: What's next, Mr. Sheasby?

MR. SHEASBY: Docket 133.

Docket 133 I think is relatively simple. Famous last words.

The -- our interrogatory response for each of their products requires -- an interrogatory request which they did not refuse to answer or object to as to these two categories is third-party components used and third-party component suppliers.

So on their DRAM modules, they use RCD chips, they use buffer chips, and they use PMIC chips from a number of different suppliers. For each of their product category, for -- each of their product ID, it appears that there could be multiple suppliers for the components. They've represented to us that they don't know -- they can't on a product-by-product basis track what RCD -- within a product ID name, they can't track what specific physical product will have an RCD or PMIC or a buffer from Supplier X or Supplier Y.

And so what we've asked them to do is just to provide us with the relative amounts of each of those components that they receive from each of those third-party suppliers that could be used in those products. And that seems to us that would resolve the issue. And obviously they know how many of those products they ordered from each of their suppliers. That would just be an invoice.

THE COURT: All right. Go ahead, Mr. Rueckheim.

MR. RUECKHEIM: Your Honor, Mike Rueckheim again.

I think the parties are close on this. Netlist's motion has substantially narrowed. And Mr. Sheasby asked me today --

we actually met and conferred on Sunday night, and I think the hurricane kind of interrupted travel plans, but we talked just two nights ago on Sunday night where we discussed this issue of whether production of sales information per component could somehow be used to estimate or reflect what components go with the end product, and that information is not tracked.

And so I think Micron is open, so I've told him that I want to talk to Micron. I just got this request on Sunday night. I think -- and I did talk to the guy. I actually just heard back. But I think Micron's open. We want to just discuss with the stipulation could be that is fair, but I think we can probably moot that, but we just need to have further discussions.

THE COURT: So what are you suggesting might be the resolution?

MR. RUECKHEIM: I think -- and Mr. Sheasby can correct me if I'm wrong, but I think he's asking for some kind of stipulation between the parties that production information that Micron has regarding purchase of these certain products at issue that--they're called third-party components, such as RCDs, data buffers--whether Micron's purchase of these components can reflect the distribution of suppliers used for the actual accused products. And so we need to, you know, talk with the smart people at Micron to make sure that all makes sense, the financial crew, but I think that's something

we can probably put to bed and have an agreement on.

THE COURT: Well, is the reason there's some question that some of these products might be used for accused products and unaccused products?

MR. RUECKHEIM: Correct, Your Honor. It's -- I think the main issue is Netlist has asked us to produce documents showing the percentage of, let's say--Montage is a supplier here--of Montage components within the accused products versus another supplier, and we just don't have that level of granularity.

But with respect to components we purchase from Montage, we'll have a number there, we'll have the accused products, and we can figure out some kind of way where it makes sense that here is your distributed percentage of these third-party components. It really shouldn't relate to issues, I would think, such as damages, because that's more just Micron's accused product sales. We're not looking -- I don't think they're looking at these third-party components for that. But I think we can get the information together and very likely come to some agreement.

THE COURT: All right. Thank you, Mr. Rueckheim.

Mr. Sheasby, are you at this point disputing the position that Micron doesn't track that information on a product-by-product basis?

MR. SHEASBY: I'm not, Your Honor. I take

Mr. Rueckheim's representation on that. So what we -- the next step would be just to provide the number of those components they order from each supplier. We don't even need a stipulation if they're not going to -- because I'd like to get this resolved now. And so if we just have the number of components that are -- that they purchased from each of the suppliers, that will give us the ratio that we need.

THE COURT: So what we would be talking about there is the number of components that Micron purchases, some of which end up in the accused products, but not necessarily all of which do.

MR. SHEASBY: But we'll have a ratio and we think that ratio will be reliable.

THE COURT: All right. Mr. Rueckheim, I understand that you may be able to reach a stipulation that would avoid a dispute down the road about this, but in terms of discovery, is there any reason that Micron shouldn't produce those raw numbers that Netlist is now seeking?

MR. RUECKHEIM: No reason at all, Your Honor. We've already offered to produce those numbers.

THE COURT: All right. Well, then I'll just note that Micron has agreed to produce the overall numbers of those component products that it purchases from each of the relevant manufacturers.

MR. RUECKHEIM: Understood.

THE COURT: All right.

MR. RUECKHEIM: And I think the next one might be me, Your Honor, but when you're ready.

THE COURT: All right. Go ahead, Mr. Rueckheim.

MR. RUECKHEIM: So with respect to Micron's motion to compel, Docket 135, micron is asking for production of a limited subset of materials from Netlist's litigations with SK hynix that was a few years ago. I believe this limited subset of materials would likely be in the 20- to 30-document range, potentially.

We're looking for really -- it's set out in the joint status report, but it's drafts of settlement agreements and offers, expert reports, witness statements, and depo hearing statements, transcripts in the pre- and post-trial briefing.

The relevance here, Your Honor, is that there is an overlapping accused product and there's also patents that were in the same family that Netlist is asserting here. And we've seen this just recently with respect to deposition of our expert Doctor Stone. Netlist's counsel put up materials that Doctor Stone submitted in the Netlist/SK hynix litigation, and there's issues overlapping there between, what Your Honor may remember from the claim construction hearing, this fork in the road idea, which is also at issue with respect to the SK hynix allegations. And so we think there's very significant technical relevance here.

There's also relevance with respect to the settlement agreements and offers here, because whether these patents relate to RAND or FRAND obligations and whether Netlist, if so, has breached their RAND or FRAND obligation can be informed by these offers. And so to the extent that Netlist and SK hynix are discussing RAND issues or valuations for portfolio versus specific license, these are all very relevant to these RAND issues.

And so Netlist is countering on a relevance ground. That is simply just not tenable at this stage for discoverability. We have narrowly tailored our request. We're not seeking everything in the SK hynix litigation, nor would I want to review everything from the SK hynix litigation--that's a lot of material. We are seeking a very narrow amount of materials here, and that is our request.

Thank you, Your Honor.

THE COURT: Tell me, Mr. Rueckheim, what do you mean by witness statements?

MR. RUECKHEIM: There was an ITC case and a district court case, and so we're looking at the witness statements in the ITC; the affirmative presentation of testimony -- written testimony to the ITC.

THE COURT: All right. Is it all from an ITC proceeding, or was there a district court proceeding also?

MR. RUECKHEIM: District court as well.

THE COURT: All right. Are any of the experts that you're seeking the reports of also involved in the current litigation?

MR. RUECKHEIM: I believe so. One in particular--Doctor Stone, who I just mentioned. I'm not sure about the rest, Your Honor.

THE COURT: All right. How are you proposing that third-party confidential information that was revealed pursuant to a protective order in that matter should be handled if any of that is produced in this litigation?

MR. RUECKHEIM: I don't know if there is an issue there, Your Honor. We've asked for this material really since the start of the litigation going back to at least January I believe is mentioned in the briefing, and I don't know if Netlist has had conversations with SK hynix as to whether they can produce the information to Micron or if there is a concern that needs to be addressed.

THE COURT: Have you been provided the license that ultimately issued in that case?

MR. RUECKHEIM: Yes, we have.

THE COURT: All right. Why would the negotiating documents be relevant, then?

MR. RUECKHEIM: To inform the RAND question, whether Netlist is offering Micron a reasonable and non-discriminatory license with respect to the present case. It would definitely

be informed based on how Netlist and SK hynix discuss the licensing of individual patents versus a portfolio of patents or what is actually the reasonable and non-discriminatory rate here.

THE COURT: I think that the Federal Circuit has made it fairly clear that what FRAND is dealing with is what the ultimate license contains, not what the parties' negotiating positions were that got to that agreement. I'm not familiar with any Federal Circuit authority that would indicate that a FRAND rate depends on the negotiation history that led to it. Are you?

MR. RUECKHEIM: One second, Your Honor.

(Pause in proceedings.)

MR. RUECKHEIM: So I should have remembered this, Your Honor, because I was actually involved in the case, but it's cited on page 4 of our motion is the *Sol IP versus*--I was representing Ericsson in the case--but *AT&T mobility*. It's an Eastern District of Texas case that granted a motion to compel discovery on these license offers and proposals because they were relevant to the RAND and FRAND issues there.

THE COURT: All right. And how would you say that this case relates to the *Sol IP* case?

MR. RUECKHEIM: There was less patents at issue in this case. Sol I think had somewhere -- about 20 patents asserted. But how it relates is really just the RAND issues.

THE COURT: Well, for one thing, I think in that case we were talking about licenses to the patents-in-suit and offers that had been made to license the patents-in-suit.

Are the patents currently asserted in this case the same patents as were involved in the SK hynix case?

MR. RUECKHEIM: They are not, Your Honor. They are in the patent family, but they are covered under the portfolio license that was granted, as is typical for patents and continuations.

THE COURT: Well, I can tell you they feel that, if anything, I understand this law better than I did when I wrote that opinion. But in any event, do you have any other authority on that?

MR. RUECKHEIM: That is the authority we cited. We'd like to see the materials, Your Honor, and I don't think there is any burden -- there could be any burden argument here because they can -- they can simply press a button and produce it to us, but we'd like to see it. And if there is a question about admissibility or, you know, about 403 down the road, I think we can deal with it at the MIL stage. That's our position, Your Honor.

THE COURT: All right. I think the concern that has always deterred the Court from ordering the production of the negotiations themselves is that doing that would chill settlement negotiations in current cases if there was a

concern that those negotiations would become open for discovery in future cases, and that's what I guess weighs against the probative value. And I just don't know what the probative value of those negotiations would be when you have a consummated license.

MR. RUECKHEIM: It may address Your Honor's concern if -- I just don't know. Looking at these documents, I just don't know whether they could relate to the RAND issues or not, and so it may be -- it's just an in camera review process or some other process that will make that determination as to whether, you know, they would arguably relate to RAND. And I assume Netlist and Micron might disagree on what that means, but if there's a way to mechanic that in order to address that concern, that would be my only suggestion.

THE COURT: All right.

MR. RUECKHEIM: Thank you, Your Honor.

THE COURT: Thank you.

MR. SHEASBY: Your Honor, I'll start with the issue of the settlement negotiations. The patents that were asserted against SK hynix were not the patents at issue in this case. Micron has not offered to provide any of its negotiation records for any of its license agreements. There is no claim of breach of a FRAND obligation live in this case, and I -- and we would respectfully submit that it is pernicious from a public policy standpoint to produce

negotiation materials when there's a final consummated agreement. If there wasn't a final consummated agreement, I would understand why a different approach may be necessary, but in this case there was.

As to the SK hynix ITC materials, the patents-at-suit in this case were not the patents-in-suit in this case. They are correct that there was one overlapping expert that is actually their expert. Mr. Stone was adverse to Netlist in the SK hynix cases, and he is also adverse to Netlist in these cases.

So the only expert that we have in this case -- none of Netlist's experts from this case were Netlist's experts in the -- I believe in the SK hynix cases. At least not on -- there may be one exception to that, but that person, previous expert, was not dealing -- it's Doctor Brogioli. But Doctor Brogioli would be dealing with HBM patents, and his previous work with us did not relate to HBM patents.

We do believe that there is some scope of appropriate production from SK hynix. What we have agreed to produce and what was acceptable in the *Netlist versus Samsung* case was the witness statements, trial testimony, and deposition of our corporate officers, which was CK Hong, Gail Sasaki, and JB Kim, as well as the trial statements and deposition testimony of our inventors. That would give them the factual information as opposed to SK hynix specific information or

third-party supplier specific information, and it would allow them to make sure that witnesses in this case were not saying inconsistent things with what was said in the last case.

But claim construction briefing and expert analysis of infringement on completely different products and patents that have different claims, that is far too afield. And we, frankly, do not want to go through the process of having to redact out all the confidential information for what would seem to be a limited -- a limited probative value given that there is different patents.

So the short answer is they are entitled to something. We've already acknowledged they are entitled to something. We offered to give them the same thing that was provided acceptably in the *Netlist versus Samsung* case which relates to these same patents, and none of the our experts in this case will -- were experts in the previous case for us testifying on the same subject.

THE COURT: Well, I don't believe that under the law statements by experts are admissible in other proceedings against the party that retained them, so I have never taken the position that expert reports from other litigation need to be provided in discovery. In this case, since there is an overlapping expert, I do believe that any report by -- is it Doctor Stone?

MR. SHEASBY: It is, Your Honor.

THE COURT: From the hynix -- SK hynix litigation should be provided to Micron in this litigation. I will deny the request for the settlement negotiations as long as the consummated settlement license agreement has been produced. I agree that any witness statements--and by that I'm referring to declarations that were offered to the tribunal as opposed to internal work product of the lawyers--any witness statements from Netlist certainly. Were there other witness statements from individuals other than those representing Netlist that were offered?

MR. SHEASBY: There were an immense number of witness statements in the proceedings. I think there were three ITC proceedings. That's why the three core witnesses, the three corporate officers and the inventors was what we had produced last time. I don't know what other witness statements there are -- there were.

THE COURT: Well, I will require that Netlist provide to Micron a list of the witness statements that are being withheld.

MR. SHEASBY: Yes, sir.

THE COURT: And if Micron can show a need for those, then I'm open to considering that request. Deposition transcripts, the same thing--it will be as to the representatives of Netlist and a list of the others that are not provided.

Is the briefing all sealed?

MR. SHEASBY: It is.

THE COURT: And is that because of third-party information or something else?

MR. SHEASBY: It's all sealed because of SK hynix confidential information and third-party confidential information because the third parties used the -- like Micron, SK hynix used third parties for the chips they put on their modules. So the vast majority of the sealing will actually be third-party confidential information.

THE COURT: Well, all right. Then thank you, Mr. Sheasby.

Mr. Rueckheim, if you want parts of the record from that proceeding that are sealed, I think that's a request you'll have to make to the tribunal that sealed them.

MR. RUECKHEIM: Understand, Your Honor.

One point of clarification. I think Mr. Sheasby also -- Your Honor ordered production of reports and I assume deposition testimony by Doctor Stone.

Mr. Sheasby also mentioned an expert Doctor Brogioli--and I'm sure I'm pronouncing that wrong--that is at issue in the prior litigation and at issue in this litigation. And so we would just make sure Your Honor understood that in making his order. And we'd also ask, unless Your Honor's already considered it, if there are any experts that opined on the

same overlapping accused product here, the DDR4 LRDIMM or any of the patents in the same family at the asserted patents. If Netlist used these experts to characterize its invention in one way in that proceeding and its current experts are characterizing different proceedings, we'd love to see that, too.

THE COURT: Why would statements by those experts be controlling on Netlist?

MR. RUECKHEIM: Netlist put up these experts as their agent, Your Honor, in my opinion. So if they were offering this testimony as Netlist's position to one tribunal, and then they tried to hire different experts for this tribunal to offer a different position I think is very fair game to me -- for me to ask their expert didn't Netlist say the opposite in a prior litigation? How does that affect your opinion now?

THE COURT: Well, two things. One, let me note, you're saying there is a second expert that is common to the two cases?

MR. RUECKHEIM: Correct. I think the name is Doctor Brogioli. And I have no way of spelling that. I'm sorry.

THE COURT: All right. I'll include that doctor in this. As to other experts, it's never been my impression of the law that the opinion of an expert is binding on the party in a different case, but I'll take a look at that and see if

that has changed.

MR. RUECKHEIM: Understood, Your Honor. Thank you, Your Honor.

THE COURT: All right. Then I will include that in the order.

Anything else on this motion, Mr. Rueckheim?

MR. RUECKHEIM: No, Your Honor.

THE COURT: All right. Mr. Sheasby, what about you?

MR. SHEASBY: No, Your Honor. That concludes all scheduled motions for today, and Netlist thanks you.

THE COURT: There is another motion, and I think the briefing on it is perhaps still going on. Is that something that either side thinks it would be helpful to take up today?

MR. SHEASBY: We don't, Your Honor. There is two other motions pending. There was one of them the briefing has not been completed. It's a motion to enforce Your Honor's previously -- previous ruling on financial information and qualification information. That briefing has not been completed.

There is also just been a brief that was filed on Monday. Statements were made in that brief that I think may moot the motion. We just need to meet and confer with them on that.

THE COURT: All right. Well, I will set a hearing on the additional motions in due course, then.

MR. SHEASBY: Thank you for your time, Your Honor.

MR. RUECKHEIM: Thank you, Your Honor.

THE COURT: All right. Thank you.

And we're adjourned.

(End of hearing.)

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER. I FURTHER CERTIFY THAT THE TRANSCRIPT FEES FORMAT COMPLY WITH THOSE PRESCRIBED BY THE COURT AND THE JUDICIAL CONFERENCE OF THE UNITED STATES.

S/Shawn McRoberts 08/24/2023

_____DATE_____
SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER